

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI (ST. LOUIS)

IN RE:)	
)	Case No. 11-40417-659
Derek S. Smith)	Chapter 13
Tracie S. Smith)	
Debtors,)	Motion No.
)	Response Date: 8/22/11
U.S. Bank N.A., as trustee, on behalf of the)	
holders of the Home Equity Asset Trust)	
2007-2Home Equity Pass-Through)	
Certificates, Series 2007-2 by Select)	
Portfolio Servicing, Inc., loan servicing)	
agent)	Hearing Date: 8/29/11
Creditor,)	Hearing Time: 10:00 am
)	Location: Courtroom 7N
John V. LaBarge, Jr.)	
Trustee.)	

NOTICE AND MOTION FOR RELIEF FROM AUTOMATIC STAY

WARNING: ANY RESPONSE OR OBJECTION MUST BE FILED WITH THE COURT, BY (SEE L.B.R. 9013-2). A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE. THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE BARRY S. SCHERMER, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, THOMAS F. EAGLETON BUILDING, 111 S. TENTH ST., ST. LOUIS, MO 63102,

COMES NOW Creditor, U.S. Bank N.A., as trustee, on behalf of the holders of the Home Equity Asset Trust 2007-2Home Equity Pass-Through Certificates, Series 2007-2 by Select Portfolio Servicing, Inc., loan servicing agent, its subsidiaries, affiliates, predecessors in interest, successors and/or assigns, ("Creditor") and in support of its motion states as follows:

1. Creditor files this motion under Rules 4001 and 9014, Rules of Bankruptcy Procedure. On January 17, 2011, the Debtors filed a Petition for Adjustment of Debts under Chapter 13 of Title 11 of the United States Code wherein Creditor was listed as a secured creditor as to the real property described by Debtors.

2. Jurisdiction is invoked in the District Court under 28 U.S.C. § 1334(a) and 28 U.S.C. § 157(b)(2)(G), and venue is just and proper in this Court pursuant to 28 U.S.C. §1408(1). This is a core proceeding.

3 Derek S. Smith and Tracie S. Smith ("Debtors") reside at 611 Sunny Pass Drive, O'Fallon, MO 63366.

4. John V. LaBarge, Jr. is the Trustee duly appointed by law ("Trustee").

5. On December 21, 2006, Debtor Derek S. Smith executed a Promissory Note (the "Note") in the principal sum of \$201,556.00 for the balance of the purchase price of a residence. The Property is described as follows:

Land situated in the County of St. Charles, and State of Missouri, to wit: Lot B1 of Westwind Park Plat 1, according to the plat thereof recorded in Plat Book 42 Page 184 of the St. Charles County Records. (Commonly known as 611 Sunny Pass Dr. Wentzville, Missouri)

6. Contemporaneously with the execution of the Note, a Deed of Trust ("Deed of Trust") was executed to secure repayment of the Note. The Deed of Trust was filed for record with the Office of the Recorder of Deeds in St. Charles County, Missouri, on December 26, 2006, in Book DE4650 at Page 2376. A copy of the Note and Deed of Trust are available upon request.

7. Creditor is the holder of the Note and the lien on the Property.

8. The approximate balance due on the Note is in the amount of \$245,758.24, an exact payoff is available upon request of an appropriate party.

9. The Debtor has claimed the Property as exempt under 11 U.S.C. §522.

10. The Plan provides that the pre-petition arrearage due on the Note would be paid to the Trustee and Debtor would pay the post-petition payments directly to Creditor.

11. The Debtor has failed to pay the post-petition payments due Creditor on the Note held by Creditor. The following amounts are now due and owing:

Description	Amount
(3) Late Payments @ \$1,626.84 (6/1/11 – 8/1/11)	\$4,880.52
Amount shorted on escrow for 2/1/11 payment (See payment history below)	\$26.09
Attorney Fee:	\$600.00
Filing Fee:	\$150.00
Less Suspense Balance of:	(\$1,013.04)
Total:	\$4,643.57

12. Creditor is seeking attorney fees and costs for bringing this Motion for Relief from Stay pursuant to 11 U.S.C. § 1322(b)(2), said fees to be assessed to and made part of the Creditor's security interest. The fees sought are \$600.00 and the costs sought are \$150.00.

13. The Debtor has failed to cure the delinquency in the loan with Creditor by payment of the installments in arrears and the estate lacks sufficient assets from which the delinquency can be cured and the current monthly payments be made during the pendency of the administration of the estate and Creditor's interest in the real property lacks adequate protection.

14. The Debtor has materially defaulted with respect to payment of Creditor's secured claim and has caused unreasonable delay, which is prejudicial to the Creditor.

15. That Creditor is requesting that any order granted by this Court sustaining this motion contain a provision that the order shall survive the conversion of this case to a Chapter 7 proceeding.

WHEREFORE, Creditor, its subsidiaries, affiliates, predecessors in interests, successors and/or assigns, prays that it be granted Relief from the Automatic Stay of 11 U.S.C. Section 362(a) to enforce its lien granted in the Deed of Trust and for such other relief as set forth in our motion as specifically prayed for, including attorney fees and costs if requested, and further relief as the Courts deems proper.

SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE

The following exhibits in reference to the Motion for Relief from Automatic Stay are available upon request:

1. Note and Deed of Trust

/s/ Chelsea Herring Springer
Chelsea Herring Springer #118127
McNearney & Associates, LLC
6800 College Blvd, Suite 400
P.O. Box 7410
Overland Park, KS 66207
(913) 323-4595, ext. 139
FAX (913) 661-1747
cindy@mcnearneylaw.com
ATTORNEYS FOR CREDITOR

I hereby certify that a copy of the foregoing was served via ECF to those parties receiving ECF notice and mailed to the parties listed below on August 4, 2011 to:

Derek S. Smith
Tracie S. Smith
611 Sunny Pass Dr.
O'Fallon, MO 63366
DEBTOR

Douglas M. Heagler
6302 N. Rosebury, Ste 1W
Clayton, MO 63105
ATTORNEY FOR DEBTOR

John V. LaBarge, Jr.
P.O. Box 430908
St. Louis, MO 63143
TRUSTEE

/s/ Chelsea Herring Springer

POST-PETITION PAYMENT HISTORY

<u>Post Petition Due Date</u>	<u>Amount Due</u>	<u>Date Payment Received</u>	<u>Amount Received</u>	<u>Notes</u>
2/1/11	\$1,652.93	3/2/11	\$1,626.84	Shorted escrow \$26.09
3/1/11	\$1,626.84	4/7/11	\$1,626.84	
4/1/11	\$1,626.84	5/9/11	\$813.42	Partial payment to suspense
		5/19/11	\$813.42	
5/1/11	\$1,626.84	6/16/11	\$813.42	Partial payment to suspense
		6/30/11	\$826.46	(\$13.04) suspense balance
		7/25/11	\$500.00	(\$513.04) suspense balance
		7/30/11	\$500.00	(\$1,013.04) suspense balance
6/1/11	\$1,626.84			
7/1/11	\$1,626.84			
8/1/11	\$1,626.84			